

California Exempt Series Computer Professionals

PART 5 OF 5

Agenda

Notes About Exemption

Review the California requirements for meeting exemption under the Computer Professionals exemption.

- The Law
- Primary Engagement
- The Work
- Work Generally Not Considered Exempt

Recap of California Exemptions

Notes About Exemption

Over the past 20 years, misclassifying employees as exempt has been one of the greatest sources of legal exposure for California employers.

California exemption class requirements are generally stricter than those set by the federal FLSA.

Litigation can be costly with damages including meal and rest period violations, overtime pay, and waiting time penalties.

Exemption isn't based upon a title.

Pending DOL FLSA changes will open the door for increased litigation in this area.

The Law

Labor Code 515.5 eliminates overtime wages for computer professionals if they are paid in accordance with the CA Labor Code 510 **and** meet all of the following requirements:

Primarily engaged in work that is intellectual or creative and requires the exercise of independent judgment;

The employee is primarily engaged in duties that consist of one or more of the following:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.
- The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

The Law

The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering. *A job title shall not be determinative of the applicability of this exemption;* and

The employee is paid the minimum wage set for this exempt class.

Primary Engagement

The employee is primarily engaged in work...

...that is intellectual or creative

...and that requires the exercise of discretion of independent judgment,

...and the employee is primarily engaged in duties that consist of one or more of the following:

Primary Engagement

The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications.

The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specifications.

The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

Primary Engagement

“Primarily engaged” means that more than 50% of the employee’s work time to be spent on those types of duties.

The Work

The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

A job title is not determinative of whether or not the position is exempt or not, and like every other exempt classification a determination must be made only on the types of duties the employee is supposed to be performing.

Not Generally Exempt

Trainees or entry-level employees.

The employee is a trainee or employee in an entry-level position

...who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis programming, and software engineering.

Not Generally Exempt

Employees who can't work independently.

The employee is in a computer-related occupation

...but has not attained the level of skill and expertise necessary to work independently and without close supervision.

Not Generally Exempt

Employees with work that consists of repairing computer hardware.

The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

Not Generally Exempt

The employee performs work that is not computer systems analysis or programming.

The employee is an engineer, drafter, machinist, or other professional whose work
...is *highly dependent upon or facilitated by the use of computers and computer software* programs

...and who is *skilled in computer-aided design software*, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

Not Generally Exempt

The employee's work consists of developing user manuals.

The employee is a *writer engaged in writing material*, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for on screen media or who writes

...or *provides content material intended to be read* by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

Not Generally Exempt

The employee's work consists of developing special effects.

The employee is engaged in creating imagery for effects used in the motion picture, television, or theatrical industry.

Minimum Salary

Distinguished from the other exempt classes

Executive, Administrative & Professional (2 X Min Wage)

Inside Sales Commissioned (1.5 X Min Wage with over ½ in commissions)

The rate has been adjusted for 2016 from \$85,841.60 to \$87,048.00

Effective January 1, 2016

Recapping California Exemption

Exempt classes include:

- Executive
- Administrative
- Professional/Learned Professions
- Sales (Commissioned Inside Sales, Outside Sales)
- Computer Professionals

Recapping California Exemption

Meeting exemption means satisfying specified job and salary requirements.

Job requirements require the ability to work independently, make decisions with little or no supervision, and make decisions of consequence (or make recommendations that carry significant weight).

Executive, Professional and Professional exemptions must be paid no less than 2 times the prevailing minimum wage. For 2016 it is \$41,600 (\$20 X 2,080).

Commissioned Inside Sales Exempt employees must be paid no less than 1.5 times the prevailing minimum wage with over 1/2 earned in commissions.

The pending DOL change may increase the minimum to \$50,440 later in 2016.

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